IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6680 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANASMA NAGAR PANCHAYAT - Petitioner(s)

Versus

D.K.RAO - Respondent(s)

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Appearance :

MR RN DAVE for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 22/12/2005

ORAL JUDGMENT

1.The petitioner, 'Nagar Panchayat has filed this petition under article 226 of the Constitution of India praying for quashing and setting aside the order passed by the Development Commissioner on

19.11.86 confirming the order passed by the District Development Officer on 23.7.86. The petitioner has also sought for the declaration that the subsequent order passed by the District Development Officer on 18.12.86 is null and void and inoperative and also beyond the power of the District Development Officer.

2. The petition was admitted and rule was issued on 30.12.86. The Court has also granted ad interim relief in terms of para 19 (c) of the petition whereby the order dated 23.7.86 and 19.11.86 were stayed.

3. It is the case of the petitioner that the respondent No. 3 was serving as Senior Clerk since inception and even prior thereto since 1955. The respondent No. 4 was employed as Junior Clerk from 1st August 1964 in the services of petitioner Panchayat and respondent No. 5 was employed as Tax Clerk since incorporation of petitioner Panchayat and even prior thereto he was working as Tax

Clerk since 1959.

4.It is also the case of the petitioner that one Babubhai M. Patel was employed in petitioner Panchayat as Mistry since long and one Dhanjibhai B. Patel was serving as Shops cum Octroi Inspector in the petitioner Panchayat.

5.It is also the case of the petitioner that prior to March 1986 one N.J Patel was employed as Accountant of petitioner Panchayat. He applied for voluntary retirement w.e.f 1st June 1986. He proceeded on leave w.e.f 1st April 1986. Thus the vacancy in the post of Accountant occurred in the petitioner Panchayat w.e.f 1st June 1986.

6.The petitioner states that one Manibhai Amthabhai Patel was working as Secretary of petitioner Panchayat on loan services from the State Government. He was repatriated to the Government services by the State Government and accordingly the post of Secretary of petitioner Panchayat was

to fall vacant w.e.f 1st April 1986.

7. It is in the above background that a General Body Meeting of petitioner Panchayat was convened and pursuant to the discussions and deliberations on items of agenda, the petitioner Panchayat passed resolution No. 177, 178 and 179 on 10th March 1986. Pursuant to the resolution passed by the petitioner Panchayat in respect of the vacancy that occurred because of the repatriation of Mr. Manibhai Patel to the services of the State Government it was decided by the General Body of the petitioner Panchayat to give promotion on the post of Secretary to the senior clerk of the petitioner Panchayat to respondent No. 3.

8. Similarly, because of promotion of Senior Clerk to the post of Secretary of Nagar Panchayat, a vacancy occurred in the post of Senior Clerk. One Prahalladbhai S. Patel respondent No. 4 who was then working as Junior Clerk was resolved to

be promoted to the post of Senior Clerk w.e.f 1st April 1986. Such Resolution was passed on 10th March 1986 being resolution No. 178.

9. Similarly, on promotion of Junior Clerk to the post of Senior Clerk, vacancy occurred in the post of Junior Clerk and Octroi Clerk, Somabhai Madhavlal was resolved to be promoted to the post of Junior Clerk w.e.f 1st April 1986 by that very resolution.

10. The petitioner states that the Accontant of petitioner Panchayat namely Natwarlal J. Patel voluntarily retired and he proceeded on leave w.e.f 1st April 1986 and vacancy in the post of Accountant was to occur w.e.f 1st June 1986. By resolution No. 177 dated 10th March 1986 the General body of the petitioner Panchayat unanimously resolved that the application of Natwarlal J. Patel for voluntary retirement should be accepted and the post of Accountant should be filled in by promotion of Dhanjibhai S.

Patel who was then serving as Shops cum Octroi Inspector w.e.f 1st June 1986.

11.Similarly, Rameshbhai M. Patel who was then serving as Tax Clerk was resolved to be promoted to the post of Shops -cum -Octroi Inspector w.e.f from 1st June 1986 by that very resolution No. 177 dated 10th March 1980.

12.Pursuant to the aforesaid resolutions the petitioner issued order of promotion of respondents No. 3 to 5 and other employees to the respective posts for which they were promoted. Accordingly respondent No. 3 and 4 have resumed the charge of the post of Secretary and Senior Clerk w.e.f 1st April 1986 and respondent No. 5 resumed charge of the Post of Shops cum Octroi Inspector w.e.f 1st June 1986 and Ambalal H. Patel resumed charge of the post of Tax Clerk w.e.f 1st June 1986. One Danjibhai S. Patel also resumed the post of Accountant of petitioner Panchayat w.e.f 1st June 1986. Thus, all the

three resolutions passed by the petitioner Panchayat were fully implemented and executed and persons who were promoted by such resolution have already resumed charge of their promotional posts w.e.f 1st April 1986 and 1st June 1986.

13. After sometime the respondent No. 1herein in purported exercise of his power under section 294 (4) of Gujarat Panchayats Act, issued an order dated 23rd July 1986 wherein the resolution passed by the petitioner Nagar Panchayat being resolutions No. 177, 178, 179 were suspended.

14.Being aggrieved by the said order of the District Development Officer the petitioner preferred Revision Application before the Development Commissioner under section 305 of the Act and the Development Commissioner, by its judgment and order dated 19th November 1986 dismissed such revision application without applying his mind to the provisions of section 294 (4) of the said Act and without applying the

mind to the contention of the petitioner Panchayat that the petitioner respondent No. 3 to 5 were never heard before passing the order suspending or setting aside the resolution.

15.It is stated that the only objections being passed by the petitioner Panchayat is that the Panchayat has not followed the procedure prescribed by Gujarat District Panchayat Services Committee (Consolidation) Rules, 1964. The petitioner states that under the relevant Rules only advice of Selection Committee is required to be obtained. Intimation of such appointment or promotion is to be sent to the Selection Committee. It is also not needed that there should be prior advice or consultation of the Selection Committee. In fact appointment /promotion can be made in anticipation of the approval or concurrence of the Selection Committee. The petitioner has also informed the first respondent that they were sending the names and resolutions for approval of the

Selection Committee. It is therefore submitted that non-obtaining of the advice of the committee prior to the promotion of the petitioner does not as such vitiate the resolution of the petitioner nor does it vitiate the consequent promotion of respondent No. 3 to 5 and other employees to the respective promotional posts. It is therefore submitted that order dated 23rd July 1986 passed by the first respondent is absolutely without application of mind and without the authority of law and therefore the same is liable to be quashed and set aside.

16. It is further stated that persons who were appointed were in fact not desirous of coming to the respective posts. In such orders of appointment issued by the first respondent he has also stated that he was making such appointment issued by the first respondent he has also stated that he was making such appointment in anticipation of advice being

granted by Selection Committee. Therefore , it is submitted that the order of the first respondent in suspending the effect of the reso' passed by the petitioners and ultimately striking down of such resolution by order dated 18th December 1986 is absolutely without law and is null and void and is liable to be quashed and set aside and the same should not have been interfered by the District Development Officer or Development Commissioner.

17. In the above view the petition of the matter , this Court is of the view that promotions given by the petitioner are just and proper. The orders passed by the respondents No. 1 and 2 are without assigning any reason and are in violation of the principles of natural justice. Even otherwise, orders passed by the respondent No. 1 and 2 are stated by the Court in 1986 and promotions were effected. There is no justification in disturbing the same after more than 19 years. The petition is therefore, allowed. Impugned orders are hereby

quashed and set aside. Rule made absolute without any ordered as to costs.

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(K.A.PUJ, J)

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